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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2040

GERARDO DE LA TORRE  
1039 13th Street  
Imperial Beach, CA 91932

**A C C U S A T I O N**

Respiratory Care Practitioner  
License No. 20930

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 12, 1999, the Respiratory Care Board issued Respiratory Care Practitioner License No. 20930 to GERARDO DE LA TORRE (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

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3. This Accusation is brought before the Respiratory Care Board (Board),

4. Section 3710 of the Code states, in pertinent part: “The Respiratory Care

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following

“(d) Conviction of a crime that substantially relates to the qualifications, functions, and duties of a respiratory care practitioner. The record of conviction or a certified copy of the record shall be conclusive evidence of the conviction.

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

7. California Code of Regulations (CCR), title 16, section 1399.370, states, in

“For the purposes of denial, suspension, or revocation of a license, a crime shall be considered to be substantially related to the qualifications, functions

1 or duties of a respiratory care practitioner, if it evidences present or potential  
2 unfitness of a licensee to perform the functions authorized by his or her license or in  
3 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts  
4 shall include but not be limited to those involving the following:

5 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
6 abetting the violation of or conspiring to violate any provision or term of the Act.

7 “. . .

8 “(c) Conviction of a crime involving driving under the influence or reckless driving  
9 while under the influence.

10 “. . .”

#### 11 COST RECOVERY

12 8. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

13 "In any order issued in resolution of a disciplinary proceeding before the board, the  
14 board or the administrative law judge may direct any practitioner or applicant found to have committed  
15 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and  
16 prosecution of the case."

17 9. Section 3753.7 of the Code states:

18 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include  
19 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,  
20 and service fees."

21 10. Section 3753.1 of the Code states, in pertinent part:

22 "(a) An administrative disciplinary decision imposing terms of probation may include,  
23 among other things, a requirement that the licensee-probationer pay the monetary costs associated with  
24 monitoring the probation. . . ."

#### 25 FIRST CAUSE FOR DISCIPLINE

##### 26 (Conviction of a Crime)

27 11. Respondent is subject to disciplinary action under Code section 3750(d),  
28 3750(g), and CCR, title 16, section 1399.370(a) and (c), in that he was convicted of a crime

1 substantially related to the qualifications, functions, or duties of a respiratory care practitioner. The  
2 circumstances are as follows:

3           A.     On or about September 20, 2005, in the case entitled *The People of*  
4           *the State of California v. Gerardo DelaTorre*, Case No. S194251, before the  
5           Superior Court of California, County of San Diego, South County Division,  
6           Respondent was convicted on his own guilty plea of one count of driving a vehicle  
7           while under the influence of an alcoholic beverage and a drug and under their  
8           combined influence in violation of Vehicle Code section 23152(a) [driving under  
9           the influence of alcohol and drugs]. As a result of the conviction, Respondent was  
10          sentenced to five years summary probation with terms and conditions.

11          B.     The circumstances of the conviction are as follows: On or about  
12          March 31, 2005, Respondent's vehicle was stopped for speeding. When contacted  
13          by the San Diego Sheriff Deputy ("Deputy"), Respondent had alcohol under his  
14          breath and his eyes were red, watery, and bloodshot. Also, Respondent was  
15          shaking, kept moving his hands and feet, was sweating, and had a white crusty ring  
16          around his mouth and his lips were dry. Respondent admitted he had been  
17          drinking. The Deputy administered field sobriety tests because he believed  
18          Respondent was under the influence of alcohol and possibly a central nervous  
19          stimulant. Respondent was unable to perform the tests properly even upon repeated  
20          instructions, and was unable to perform the One Leg Stand Test. Respondent was  
21          subsequently arrested for driving under the influence of alcohol and drugs and  
22          driving while having a 0.08% or higher blood alcohol.

23          C.     On or about June 23, 2005, a Complaint was filed in Superior Court  
24          of California, County of San Diego, South County Division, charging Respondent  
25          with one count of driving under the influence of an alcoholic beverage and a drug  
26          and under their combined influence, driving a vehicle, in violation of Vehicle Code  
27          section 23152(a) [driving under influence of alcohol and drugs - Count 1] and one  
28          count of driving while having 0.08 percent and more, by weight, of alcohol in his

1 blood, drive a vehicle, in violation of Vehicle Code section 23152(b) [driving while  
2 having a measurable blood alcohol - Count 2].

3 SECOND CAUSE FOR DISCIPLINE

4 (Conviction of a Crime Involving Driving Under the Influence)

5 12. Respondent is further subject to disciplinary action under Code section  
6 3750(g) and CCR, title 16, section 1399.370(a) and (c), in that he was convicted of a crime  
7 involving driving under the influence of alcohol and drugs, as more particularly described in  
8 paragraph 11, above, which is incorporated by reference as if fully set forth herein.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
11 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

12 1. Revoking or suspending Respiratory Care Practitioner License No. 20930,  
13 issued to GERARDO DE LA TORRE;

14 2. Ordering GERARDO DE LA TORRE to pay the Respiratory Care Board  
15 the costs of the investigation and enforcement of this case, and if placed on probation, the costs of  
16 probation monitoring;

17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: July 19, 2006

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21 Original signed by Liane Zimmerman for:  
22 STEPHANIE NUNEZ  
23 Executive Officer  
24 Respiratory Care Board of California  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
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